

### REMARKS

Favorable reconsideration of this application in light of the above amendments and the following remarks is respectfully requested. Claims 1-5, 7-11 are pending in this application. Claims 1-3 and 7-9 are amended herein. Claim 6 is canceled herein. No claims have been allowed.

#### *Claim Rejections – 35 U.S.C. § 102(e)*

Claims 1-11 are rejected under 35 U.S.C. § 102(e) as being anticipated by Kravitz (U.S. Patent No. 6,397,385; hereinafter “Kravitz”).

The Examiner reads Kravitz serially onto applicant’s claims and concludes that all limitations within applicant’s claimed invention are taught within Kravitz.

In response in a first instance, applicant has amended claim 1 and claim 7 to incorporate therein some of the limitations from claim 6, to thus provide within claim 1 and claim 7 limitations that applicant believes to patentably distinguish applicant’s invention from that which is taught within Kravitz. In particular, applicant has amended claim 1 and amended claim 7 to incorporate therein the limitations that applicants upgrade to applicant’s computer system is selected from the group consisting of firmware upgrades and hardware upgrades.

For comparison purposes, Kravitz invention provides (abstract) “[a] method and apparatus for upgrading software, or a portion thereof, on a continuously running system, while the system is operating.” Kravitz clearly does not teach a firmware or a hardware upgrade method and apparatus, but rather only a software upgrade method and apparatus as is related to applicant’s computer system upgrading method and apparatus. Thus, Kravitz clearly does not anticipate amended claim 1 and amended claim 7 where applicant claims a hardware upgrade or a firmware upgrade within the context of applicant’s computer system upgrade.

In response in a second instance, applicant has also amended claims 2-3 and 8-9 to incorporate therein the limitations from claims 1 or 7 as unamended. Thus, claims 2-3 and 8-9 are now independent claims. Applicant also believes that newly independent claims 2-3 and 8-9 are also not anticipated by Kravitz. Newly independent claims 2-3 and 8-9 claim various fabrication facilities wherein applicant's computer system is operated. The fabrication facilities include chemical fabrication facilities, mechanical fabrication facilities and electrical fabrication facilities (claims 2 and 8) and more specifically microelectronic fabrication facilities (claims 3 and 9).

Applicant notes that Kravitz at col. 11, lines 49-56 teaches that Kravitz software upgrade method and apparatus may be employed in continuously running computer systems other than the telecommunications system that provides the preferred embodiment of Kravitz invention. Kravitz specifically teaches "industrial control systems" in addition to telecommunications systems, as appropriate for Kravitz invention. However, Kravitz clearly does not teach that such "industrial control systems" may be employed within any of the chemical, mechanical, electrical or microelectronic fabrication facilities that applicant has specifically enumerated and claimed within claims 2-3 and 8-9. Since Kravitz does not teach applicant's specifically enumerated and claimed fabrication facilities within applicant's claims 2-3 and 8-9, applicant asserts that claims 2-3 and 8-9 may also not properly be rejected under 35 U.S.C. § 102(e) as being anticipated by Kravitz.

In response in a third instance, applicant notes that Kravitz at Fig. 4A teaches an upgrade manager 404 apparently integral to a matrix card 400 within a computer system. Thus, the specific subject matter of claims 4 and 10 which claim an upgrade management utility resident within a computer system is apparently anticipated by Kravitz. On the other hand applicant does not believe that the specific subject matter of claims 5 and 11 with respect to the upgrade management utility not resident within the computer system is anticipated by Kravitz. The Examiner cites Kravitz at col. 9, lines 31-53 for such a teaching, but applicant is unable to

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locate such a teaching therein. Rather, Kravitz at col. 9, lines 31-53 is directed towards description of Kravitz Fig. 4A. In accord with the above applicant believes that Kravitz at Fig. 4A teaches an upgrade management utility resident within a computer system rather than non-resident within the computer system. Thus, applicant believes that claims 5 and 11 contain subject matter unanticipated by Kravitz.

Remaining claims 4 and 10 within the foregoing rejection are dependent upon claim 1 or claim 7 and carry all of the limitation thereof. For that reason, they may also not properly be rejected under 35 U.S.C. § 102(e) as being anticipated by Kravitz.

In light of the foregoing responses, applicant respectfully requests that the Examiner's rejections of claims 1-11 under 35 U.S.C. § 102(e) as being anticipated by Kravitz be withdrawn.

#### ***Other Considerations***

Applicant acknowledges the additional prior art of record cited by the Examiner on PTO Form 892 but not employed in rejecting applicant's claims to applicant's invention. A fee is due as a result of this amendment and response. A Credit Card Payment Form in the amount of \$258 is attached hereto.

#### **SUMMARY**


Applicant's invention as disclosed and claimed within claims 1 and 7 is directed towards a method and system for upgrading a computer system with respect to firmware and hardware components. Applicant's invention as disclosed and claimed within claims 2-3 and 8-9 is directed towards a method and system for upgrading the computer system as employed within any of several enumerated fabrication facilities. The applied prior art does not anticipate applicant's invention as claimed within claims 1-3 and 7-9.

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### CONCLUSION

On the basis of the above remarks, favorable reconsideration of this application, and its early allowance, are respectfully requested.

Any inquiries relating to this or previous communications pertaining to this application may be directed towards the undersigned attorney at 248-540-4040, at the Examiner's convenience.

Respectfully submitted,  
  
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